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COMMENTS ON THE CONSTITUTION OF OKLAHOMA

BY R. L. OWEN

United States Senator from Oklahoma

The Constitution of Oklahoma has probably been misunderstood to some extent because of hostile criticism in the public press, inspired, as the people of Oklahoma believe, by the antagonism of special interests.

The Constitution of Oklahoma is nothing more nor less than what might have been expected from a community where hundreds of thousands of men were assembled within a few short years, coming from every state in the Union, and bringing with them their experience as citizens of other states. Trained lawyers from every state in the Union were assembled in Oklahoma, and took part in the drawing of the Constitution of the new State. They had before them a personal knowledge as well as the actual text of the Constitution of every state in the Union, and the knowledge of the judgments of courts relative thereto.

The most important thought which runs through the Constitution of Oklahoma is expressed in Section 11, of Bill-of-Rights, to wit:

"All persons have the inherent right to life, liberty, the pursuit of happiness, and *the enjoyment of the gains of their own industry.*"

It will here be observed that "the enjoyment of the gains of their own industry" is emphasized by being added to the usual declaration of the inherent right "to life, liberty, and the pursuit of happiness" which other Constitutions have uniformly set forth.

The Constitution was drawn with a view to making this special declaration effective, and with a view to controlling monopolies and special privileges. Section 32 for example declares that "Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed." With a view to preventing this abuse Section 28 provides, as follows:

"The records, books and files of all corporations shall be, at all times, liable and subject to the full visitorial and inquisitorial powers of the State."

Because corporate powers has been known to be exercised in transporting people out of the State, without due process of law, Section 29 provides:

"No person shall be transported out of the State for any offense committed within the State, nor shall any person be transported out of the State for any purpose, without his consent, except by due process of law." Of course the reasonable exceptions are provided.

With a view to enable the State to meet a monopoly found to have been grievously exercised in the West in the way of school-books, binding-twine, oil-refineries, etc., and it being believed that the experience of Kansas justified it, Section 31 provides:

"The right of the State to engage in any occupation or business for public purposes shall not be denied nor prohibited," with certain reasonable exceptions. Kansas undertook to protect her oil fields by proposing a State Refinery, but was unable to do so because the Constitution did not permit.

In order to insure publicity, and to prevent concealment of corporate, or other frauds against the people, the Constitution provides that a witness can be compelled to give testimony, whether it inculcates him or not; but when so testifying shall not be incriminated or prosecuted, as follows:

"Sec. 27. Any person having knowledge or possession of facts that tend to establish the guilt of any other person or corporation charged with an offense against the laws of the State, shall not be excused from giving testimony or producing evidence, when legally called upon so to do, on the ground that it may tend to incriminate him under the laws of the State; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence."

This section is relied upon to prevent successful conspiracy, and to make it inexpedient for persons to conspire together to defraud others, or to commit crime of any kind.

With a view to preventing corporate abuse of private individuals in the matter of property condemned, Section 24 provides:

"Until the compensation shall be paid to the owner, or into court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested. When possession is taken of property condemned for any public use the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice

to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of such compensation. The fee to land taken by common carriers for right-of-way, without the consent of the owner, shall remain in such owner subject only to the use for which it is taken."

With a view to preventing the possible tyranny of courts, under the influence of corporate power by the use of the blanket injunction, and punishing men for contempt, it is provided:

"Sec. 25. The legislature shall pass laws defining contempts and regulating the proceedings and punishment in cases of contempt: Provided that any person accused of violating or disobeying, when not in the presence or hearing of the court, or judge sitting as such, any order of injunction, or restraint, made or rendered by any court or judge of the State, shall, before penalty or punishment is imposed, be entitled to a trial by jury as to the guilt or innocence of the accused. In no case shall a penalty or punishment be imposed for contempt, until an opportunity to be heard is given."

The people of Oklahoma have the greatest possible respect for the courts, and recognize in their courts one of the most powerful arms of the government for the protection of life and property, and while they revere the judiciary they are not insensible to the fact that judges on the bench are at least but human beings and subject to the frailties of men, and should themselves be subjected to a reasonable restraint.

With a view of controlling railroads and public service corporations, and to require them to deal justly with each other, it is proved in Article 9, Section 2:

"Every railroad, oil pipe, car, express, telephone or telegraph corporation or association organized or authorized to do a transportation or transmission business under the laws of this State for such purpose, shall, each respectively, have the right to construct and operate its line between any points in this State, and as such to connect at the State line with like lines; and every such company shall have the right with its road or line, to intersect, connect with, or cross any railroad or such line."

They are required to transport each other's cars and passengers, under reasonable rules, and they are all put under the control of the "Corporation Commission." Competing or parallel lines are not permitted to consolidate. A railroad is not permitted to transport articles, manufactured, mined, or produced by it, or in which it may have a direct or indirect interest.

Transportation and transmission companies are forbidden to give free tickets, or passes, except in very special cases. The Corporation Commission has the right of inspecting the books and papers of transportation and transmission companies in the State, to require them to make reasonable reports; to give a just and proper service to the people of the State, and to fix the rate charged or classification of traffic after a proper hearing. Appeals are allowed from the Corporation Commission to the Supreme Court of the State in such matters, but the acts of the Commission are not to be suspended except by the Supreme Court. The Supreme Court is permitted to grant a supercedeas upon the filing of a proper suspending bond, filed with and approved by the Commission (or approved on review by the Supreme Court) made payable to the State in amount sufficient to insure the prompt refunding of any excess charges which might be found due upon appeal. Fictitious appeals are prevented by providing that no new evidence shall be submitted to the Supreme Court which was not submitted to the Corporation Commission at the time when their judgment was taken with regard to a given case. The Supreme Court has the right to fix new rates on appeal. The jurisdiction of the Commission does not operate to take away the jurisdiction of the courts, although the courts are generally without power to determine rates.

The railways are required to maintain proper stations for freight and passengers. The Corporation Commission is required to determine by a physical valuation "the amount of money expended in construction and equipment per mile of every railroad and other public service in Oklahoma; the amount of money expended to procure the right-of-way, and the amount of money it would require to reconstruct the road, grounds, tracks, depots, and transportation facilities, and to replace all the physical properties belonging to the railroad, or other public service corporations;" "to ascertain the outstanding bonds, debentures, indebtedness, and the amount, respectively, thereof, when issued, and the rate of interest, when due, for what purposes issued, how used, to whom issued, to whom sold, and the price in cash, property, or labor, if any, received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due, and his address, the credits due on it, the property on hand belonging to the railroad company, or other public service corporation, and the judicial or other sales of said

road, its properties, or franchises, and the amounts purporting to have been paid and in what manner paid therefor." The purpose of this information is to determine whether capital invested in the State is receiving a fair return upon its investment, and upon its properties, and whether it is dealing justly with the citizens of the State of Oklahoma, and with the further purpose of requiring them so to do, if necessary.

The provisions relating to the Corporation Commission were put into the Constitution with the express provision that the second legislature, meeting in January, 1909, might, by law, alter, amend, revise, or repeal these provisions.

There is no disposition whatever on the part of the people of Oklahoma to deal unjustly or ungenerously with capital invested in public transportation or transmission enterprises under public franchises. On the contrary the people of the State have a fixed purpose of giving stability and safety to capital; but at the same time they also propose to give safety to the people of the State against any wrongdoing whatever on the part of those who enjoy public franchises.

With a view to protecting the people of the State against the experiences of other states, where legislatures, committed to corporate powers, have been put in place and kept in place, and where such legislatures have refused to pass laws desired by the people, or have passed laws not desired by the people, the Initiative and Referendum has been established in Oklahoma. Article 5, Section 2, reserves to the people: "The power to propose laws and amendments to the Constitution, and to enact or reject the same at the polls, independent of the legislature, and also reserves the power at their own option to approve or reject at the polls any act of the legislature. Eight per cent of the legal voters, based upon the votes cast at the last general election, may propose any legislative measure; fifteen per centum, an amendment to the Constitution; five per centum, a referendum. The Referendum may run to an item, a section, or a part of an Act. The Initiative and Referendum may be used in any county, or district, or municipality.

A further precaution the people have taken against machine politics is the mandatory primary, including the nomination of state, district, county, and municipal officers, including United States senators. [Purity of elections is promoted by publicity and limiting strictly campaign expenses by statute.]

Taxes are required to be assessed upon the actual value of the property, determined by what such property would bring by voluntary sale, the purpose being to prevent the scaling down of such assessments in different portions of the State by assessors, on a rule not fixed. This rule is a rigid rule, intended to compel an equitable distribution of the taxes without favoritism.

Various precautions are taken to prevent the crafty manipulation of the making of laws in the legislature by the expert agents of special interests. For example, every act of the legislature shall embrace but one subject, with certain proper exceptions; no law shall be revived, amended, or the provisions thereof extended, or conferred unless it is reënacted and published at length. The governor may veto one item in an appropriation bill without affecting the remainder of such bill. The legislature is forbidden to pass any law granting to any association, corporation, or individuals any exclusive rights, privileges, or immunities within the State, or to pass special laws relating to localities or individuals.

Another precaution against the abuse of power is provided as follows:

"Article 6, Sec. 4. The governor, secretary of state, state auditor, and state treasurer, shall not be eligible to succeed themselves."

With a view to improving the conditions of labor Oklahoma has established a department of labor, and a board of arbitration and conciliation. The common law doctrine of fellow servants is abrogated, as to the employees of railroads, street cars, and mining companies.

The law protects from forced sale the homestead of the family.

The department of highways is established.

Compulsory education is provided.

Any city containing a population of more than 2,000 inhabitants may frame a charter for its own government.

After five years there shall not be permitted any ownership of land by aliens within Oklahoma. Monopoly of land may be prevented (and is prevented by a progressive tax by statute).

Corporations are discouraged from speculating in real estate.

An eight hour day is provided for State, county, and municipal labor.

Contracting convict labor is prohibited.

Child labor is prohibited.

Underground work for children and women is prohibited.

Contributory negligence is a question of fact to be left to the jury.

The right of action to recover damages for injuries resulting in death, shall not be abrogated, and the amount recoverable shall not be subject to any statutory limitations.

The contract of any person waiving his constitutional rights shall be void.

The constitution may be amended by initiative petition, as above stated, by act of legislature proposing an amendment to be voted on at the next regular general election, or by a two-thirds vote of the legislature, by special election. A majority of all the electors voting at such election may adopt such amendment.

No constitutional convention can be called to propose alterations, revisions, or amendments to the constitution, or to propose a new constitution, unless first provided by a referendum vote, and any amendments, alterations, revisions, or a new constitution proposed by such constitutional convention shall be approved by a majority of the electors voting thereon before becoming effective.

The federal government in the enabling act required Oklahoma to adopt the policy of prohibition for that portion of the State which constituted Indian Territory at the time of the admission. This was due to treaty obligations with the five civilized tribes of Indians. Oklahoma made the rule uniform throughout the State by a referendum vote at the time of the adoption of the constitution.

The people of Oklahoma are content with their constitution and may easily amend it if they should ever find it in any degree disappointing.